

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.28005 of 2005

Date : 5-6-2006

Between :

Mir Mujahid Ali s/o.Late Mir Munawar Ali,
Aged about 46 years, occ: Engineer,
R/o.H.No.10-5-23/3/1, Masabtank,
Hyderabad-500028.

.. Petitioner

And

1. The Municipal Corporation of Hyderabad,
represented by its Commissioner,
M.C.H. Building, Tank Bund,
Hyderabad.
2. Assistant Commissioner,
M.C.H. Circle V, Khairtabad,
Hyderabad.

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Respondents

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ORDER:

1. Heard the Counsel on record.
2. The Writ Petition is filed for a Writ of Mandamus directing the respondents to receive the application of the petitioner seeking permission for construction of building in plot No.8-2-602/A, Zehra Nagar, Road No.10, Banjara Hills, Hyderabad without insisting on production of No Objection Certificate from the District Collector, Hyderabad District and the clearance from Urban Land Ceiling authorities and pass such other or further orders.
3. It is stated that suitable directions had been issued in a similar Writ Petition in W.P.No.18761/2005 by order dated 24-8-2005. It is stated by the petitioner that the petitioner had purchased a house bearing Municipal No.8-2-602/A, Zehra Nagar, Road No.10, Banjara Hills, Hyderabad under a registered sale deed dated 9-3-1996. Several other details also had been furnished. It is further stated that the petitioner made an application to the respondents-Corporation for permitting him to demolish the old building and for constructing a new one in its place. However, when the petitioner approached with the said application the authorities of the respondents-Corporation refused to receive the application informing him that he should produce a No Objection Certificate from the District Collector and also a clearance certificate from the Urban Land Ceiling

authorities. It is further stated that such No Objection Certificate from the District Collector or the Clearance Certificate from the Urban Land Ceiling authorities need not be produced. Hence the relief had been prayed for by the petitioner.

4. The 2nd respondent filed a counter affidavit to the effect that as per the building Bye-Laws of 1981, the applicant has to submit Town Survey Land Record along with application in support of ownership documents in addition to the copies of title deeds. The Government also issued instructions in Memo No.20548/M1/97-2, MA, dated 27-9-1997 and made it compulsory for any applicant to furnish the Town Survey number/Block/Ward particulars while applying for sanction of the building permission/Layout permission to see that every applicant seeking for permission gets the information relating to the relevant T.S. number without any delay and to avoid any malpractice to see that the public should not be put to any inconvenience in this regard. As such the respondents-Corporation had made it compulsory and insisting for the same. It is also stated that in regard to Clearance Certificate from the Urban Land Ceiling authorities, as per Sections 429 and 388 of the Hyderabad Municipal Corporation Act, 1955, hereinafter referred to as "Act" for the purpose of convenience, the party has to submit the same if the plot exceeds 1000 sq.mts.

5. Section 429 of the Act deals with **Commissioner may require plans and other documents to be furnished.**

Section 429(1)(aa) of the Act reads as hereunder :

“At any time within thirty days after receipt of any notice under Section 428, the Commissioner may, by written notice, require the person who has given the notice first hereinbefore in this section mentioned, to furnish to the Commissioner all or any of the following documents, namely, a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate or as the case may be an affidavit referred to in Section 388.”

Section 388 of the Act deals with **Notice to be given to Commissioner of intention to lay out lands for building and for private streets** reads as hereunder :

“Every person who intends –

to sell or let on lease any land subject to a covenant or agreement on the part of a purchaser or lessee to erect buildings thereon,

to divide land (whether unbuilt or partly built) into building plots,

to use any land or a portion thereof or permit the same to be used for building purposes, or

to make or lay out a private street whether it is intended to allow the public a right of passage or access over such street or not, shall give written notice of his intention to the Commissioner and shall along with such notice, furnish a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate, in case the extent of land exceeds the ceiling limit and if it does not exceed the ceiling limit, an affidavit declaring that the total extent of land held by such holder, his or her spouse and unmarried minor children does not exceed the ceiling limit, pay the drainage betterment charges as fixed by the Commissioner from time

to time submit plans and sections, showing the situation and boundaries of such building, land and the site of the private street, if any, and also the situation and boundaries of all other lands of such person of which such building, land or site forms a part and the intended development, laying out and plotting of such building, land including the dimensions and area of each building plot and also intended level, direction, width, means of drainage, paving, metalling and lighting of such private street, the provisions of planting and rearing of trees, besides such private street and the height and means of drainage and ventilation of the building or buildings proposed to be erected on the land, and if any building when erected will not about on a street then already existing or then intended to be made as aforesaid the means of access from and to such building and the manner of the paving, metalling, draining and lighting of such means of access.”

6. It is not in serious controversy that as far as the production of No Objection Certificate from District Collector is concerned, the same need not be insisted upon. But however, it is stated that as far as the clearance of Urban Land Ceiling is concerned, at least an affidavit in accordance with what had been specified by the aforesaid provisions may have to be sworn in. No doubt strong reliance was placed on the decision of the learned Judge of this Court in W.P.No.18761/2005 wherein a direction was issued directing the respondents to consider and pass appropriate orders on the application of the petitioner for grant of building permission if the said application is filed in accordance with Bye Law No.4(2) of Hyderabad Municipal Corporation Act, 1955 within a period of six weeks from the

date of receipt of a copy of the order without insisting on production of No Objection Certificate and Clearance Certificate from the Urban Land Ceiling Authorities.

7. In the light of the provisions specified supra, an affidavit as contemplated by the provisions may have to be sworn in. Hence, the said clarification is issued. As far as the insisting of production of No Objection Certificate from District Collector is concerned, it is not necessary. Hence, the respondents are directed to receive the application of the petitioner praying for permission for construction of a building in Plot No.8-2-602/A, Zehra Nagar, Road No.10, Banjara Hills, Hyderabad without insisting on production of No Objection Certificate from the District Collector, but however on compliance of the provisions of Section 429 r/w. Section 388 of the Act. The Writ Petition is allowed to the extent indicated above. No order as to costs.

Narayana

Justice P.S.

Date : 5-6-2006

L.R. copy to be marked : YES / NO

Note:

Furnish copy in two days.

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